the business of the Court to read into it anything more than what is expressed in it. It says:

"All instruments or appliances for gaming, money, securities for money, and other articles found in a common gaming house or any persons found therein or escaping therefrom and which the Magistrate is of opinion were used or intended to be used for any game or lottery shall be declared by him to be forfeited to the Government and shall be dealt with accordingly."

It is perfectly clear that if this money had been found on the premises by the police, and if the Magistrate was of the opinion that the money had been used in gaming which went on in the Club, he would have been bound to order its forfeiture. As the money was not found in a common gaming house or on any persons found therein or escaping therefrom, section 16(2) can have no application whatever to this matter. It would have been perfectly simple for the Legislature if it had intended to authorise what has been done in this instance to have said:

"Or any money, etc., which the Magistrate is satisfied was the subject-matter of the offence under the Ordinance"

or words to that effect. It only required the insertion of a few words in that sub-section to catch money which though not found on the premises or on any persons there could be traced as being the proceeds of the gaming which took place there. The Legislature has not said that and, in my opinion, that sub-section could not be invoked in order to forfeit the money in the Chartered Bank.

The question then arises whether although the Magistrate was not bound under that section to order forfeiture there was any other power giving him a discretion to order forfeiture. The only other place where one can look for it is in the Criminal Procedure Code. If it is not in the Common Gaming Houses Ordinance itself, it must be in the Criminal Procedure Code if it exists at all. I have looked at Chapter XLI which deals with the disposal of property the subject of offences. And, here again, by reason of the fact that this money was never produced before the Court, was never in the custody of the Court and was never in the custody of the police, section 407(ii) of the Criminal Procedure Code has no application either. It is a very odd state of affairs that as a result of this ruling the Club is going to get the benefit of money which is the proceeds of gambling in respect of which these four people were found to have committed offences. That seems to me to be an unfortunate result of the wording of the only two sections of law which can have any possible application to this matter.

I set aside the order of forfeiture of the sum of $1,821.50 which is in the Chartered Bank, Butterworth, in the name of the Kroh International Club.

Order accordingly.

CHOW YONG HONG v. CHOW SEE LIM & ANOR.

[O.C.J. (Smith J.) September 23, 1958]

[K.L. — Civil Suit No. 149 of 1958]

Practice and Procedure — Costs awarded in interlocutory proceedings — Whether payable forthwith — R.S.C. 1957, O. 14 r. 9.

This was an application by the plaintiff for an order that the payment of the taxed costs awarded under Rules of Supreme Court, O. 14 r. 9 to the defendants upon being given unconditional leave to defend be postponed until the suit was finally decided.

The form of the Order as drawn up was as follows: "And it is further ordered that the costs of appeal be paid by the plaintiff/respondent to the defendants/appellants as taxed by the proper officer of the Court."

The defendant after having his costs taxed attempted to levy execution in respect of these costs. The stay of execution was sought because of the attempted execution.

Held: (1) the proceedings were purely interlocutory and should follow the general rule of interlocutory proceedings and that the costs should be settled at the end of the action;

(2) under O. 14 r. 9(b) the only condition justifying an order for payment of costs forthwith is when the plaintiff in the opinion of the Judge knew that the defendants relied on a contention which would entitle them to unconditional leave to defend.

Cases referred to:—

(1) *Graham v. Sutton, Carden & Co.*, (1897) 2 Ch. 367.

(2) *Ex parte Hauxwell, In re Hemingway* (1883), 23 Ch.D. 626, 643.

(3) *Philipps v. Philipps* (1879-80), 5 Q.B.D. 60.

APPLICATION FOR STAY.

R. Ramani (*B. P. Khoo* with him) for the plaintiff.

Kam Woon Wah for the defendants.

Cur. Adv. Vult.

Smith J.: — This is an application by the plaintiff for an order that the payment of taxed costs awarded under O. 14 r. 9 by the learned Judge to the defendants upon being given unconditional leave to defend be postponed until this suit is finally decided.

The form of the order as drawn up is as follows:—

"And it is further ordered that the costs of the appeal be paid by the plaintiff/respondent to the defendants/appellants as taxed by the proper officer of the Court."

The defendants have taxed the costs and have attempted to levy execution in respect of those costs. The stay of execution is sought because of the attempted execution.

The plaintiff argued under three heads. The first was that these are interlocutory costs which are normally subject only to one taxation at the end of the suit. Secondly, it was argued that under O. 14 r. 9 there is given to the Court an express power to order costs to be paid forthwith. Such an order, it was submitted, was not made in this particular case. It was submitted further that the general rule is that interlocutory costs shall only be made payable forthwith when the party against whom the order has been made has been guilty of oppressive or unreasonable conduct — see *Graham v. Sutton, Carden & Co.*[1] Thirdly, it was argued that the order was made at an interlocutory appeal and succeeded on new evidence which was only produced at the hearing, that the order made by the learned Judge was an exceptional order, and that in view of the dicta of Baggallay, L.J. in *Ex parte Hauxwell, In re Hemingway,*[2] one might have expected that the order would have been one of no costs on either side. I remark in passing that this third argument made no appeal to me since it came near to inviting me to say that the costs (which have not been appealed against) were incorrectly awarded.

The defendants' principal argument was that the learned Judge had made a final order. Since the order made was capable of being taxed immediately, it showed that the learned Judge intended it to be paid immediately.

Reliance was placed on the case of *Philipps v. Philipps.*[3] That was a case in which the Court of Appeal, on an appeal from a Divisional Court of the Queen's Bench Division, had allowed an appeal on an interlocutory application and had made an order in favour of one party. That party sought to enforce the order for costs forthwith. The Court of Appeal in ordering that the costs be paid forthwith was careful to say that it did not wish to interfere with the practice with regard to costs in the Divisional Court but wished to insist that its own orders be obeyed. It was argued in this particular case that the same rule should apply here. A decision had been taken by the Registrar. That decision had gone on appeal to the Judge, the Judge had made an order for costs in favour of the defendants and the defendants are therefore entitled to have their costs paid immediately. It was further argued that since the Judge had given costs to the defendants under O. 14 r.9 it could only have been because he was of opinion that the plaintiff must have known that the defendants would rely on a contention which would entitle them to unconditional leave to defend.

The principal authority supporting the defendants is undoubtedly the case of *Philipps v. Philipps* but I cannot agree that this case is entirely in point. In *Philipps v. Philipps* the Court of Appeal insisted that its order must be enforced and could not be stayed by a lower Court. In the present case we have a Judge of the High Court reversing the Registrar of the High Court who is the agent of the Judge. It is not therefore the case of a higher Court insisting that its orders be carried out by a lower Court. It is rather that a Judge of the High Court has reviewed proceedings by one of his agents. It appears to me, therefore, that the proceedings are purely interlocutory and should *prima facie* follow the general rule of interlocutory proceedings and that costs should be settled at the end of the action.

It therefore becomes necessary to consider the exact terms of the order as drawn up in order to discover whether or not it implies that the costs are to be paid forthwith. Reading O. 14 r. 9 as a whole it is clear that the Judge under paragraph (a) has power to say when the costs shall be paid, and under paragraph (b) he is given the express power to order payment forthwith. In this particular case it is not expressly ordered that costs be paid forthwith. It could therefore be implied that, since it is not ordered that costs be paid forthwith, the usual practice should prevail and that the costs should become payable when the suit has been finally decided.

I have looked at the grounds for the order which the learned Judge made. In those grounds he does not in any way mention costs. I have been asked to infer from the fact that he made an order for costs in favour of the defendants that he must have been convinced that the plaintiff knew that the defendants had a good defence. I have been asked to deduce this from the fact that after the writ had been served on the defendants and before the summons was taken out the defendants had asked by letter

for certain particulars from the plaintiff. Reading that letter I cannot myself see that it is anything more than interrogatories and does not indicate what defence the defendants were intending to adopt, if any. I find myself completely unable to say why the learned Judge awarded the costs which he did. It was his discretion and he has exercised it.

O. 14 r. 9(b) appears to me to imply that the only condition justifying an order for payment for costs forthwith is where the plaintiff in the opinion of the Judge knew that the defendants relied on a contention which would entitle them to unconditional leave to defend. Nothing in the proceedings has been pointed out to me which leads me to the conclusion that the learned Judge had formed such an opinion. Since the order is silent as to when the costs shall be paid I do not consider it open to me to infer merely from the fact that it was possible to tax the costs forthwith that the costs should necessarily be payable forthwith.

The application is allowed with costs for the plaintiff in any event.

By consent this decision is also binding upon the parties to similar applications in Civil Suits 150, 151, 160, 163 and 164/58. In those suits the plaintiff is granted the order prayed.

Application allowed.

Solicitors: *B. P. Khoo; Kam Woon Wah.*

CASSIM BIN OSMAN v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Smith and Syed Sheh Barakbah JJ.) October 7, 1958]

[Penang — F.M. Criminal Appeal No. 24 of 1958]

Criminal Law and Procedure — Murder trial — Summing up — Direction by trial Judge as to the ingredients of the offence of murder.

In a murder trial it is not incumbent on the trial Judge to explain to the jury at length the whole law relating to murder or indeed to go any further in dealing with the ingredients of murder than is necessary to enable the jury to answer intelligently the questions of whether or not the accused is guilty or not guilty of that offence or, if it arises, whether he is guilty or not guilty of some other offence.

A summing up is not a dissertation upon the law, but must have reference to the way in which each case has been conducted at the trial.

Hashim bin Mat Isa v. Public Prosecutor[1] and *Manap bin Ali v. Public Prosecutor*[2] distinguished.

Cases referred to:—

(1) *Hashim bin Mat Isa v. Public Prosecutor*, (1950) M.L.J. 94.

(2) *Manap bin Ali v. Public Prosecutor*, (1958) M.L.J. 300.

(3) *R. v. Hampton*, 2 Cr. App. R. 274, 276.

COURT OF APPEAL.

M. Abraham for the appellant.

H. S. Ong (Federal Counsel) for the respondent.

Thomson C.J.: — This appellant was tried at Penang Assizes for the murder of a woman Tan Chye Hoey on 4th March, 1958, at Sungei Star, Nibong Tebal, in contravention of section 302 of the Penal Code. On 19th July, 1958, he was convicted on the unanimous verdict of the jury and sentenced to death. He appealed against his conviction and we dismissed his appeal on 2nd September, 1958.

Briefly, the evidence for the prosecution was that on the night of 4th March the woman Tan Chye Hoey left her home at Sungei Udang and was last seen alive walking along a road which would have taken her past the house of the appellant's father. When her absence caused alarm a search for her was organized by her husband and some neighbours and on the night of the 5th March the search party visited the house of appellant's father where they found the appellant. The appellant, who apparently had some sort of a reputation as a magician, purported to exercise his powers as such and went into a trance. He then led the search party to a padi field about a mile from his father's house where they found the body of the missing woman under a pile of straw. The face of the woman had been completely battered in by several blows probably inflicted with considerable force by a heavy blunt instrument. The lower part of the body was naked and there were suggestions of non-forcible sexual interference. There were abrasions on the left wrist consistent with bangles having been forcibly removed. The medical officer who examined the body the next morning was of the opinion that death had occurred probably not less than 24 hours and not more than 48 hours before the time of his examination.

The appellant was arrested on the morning of 9th March, 1958, and the same morning he conducted Police officers to a bush in the garden of his father's house where they found a cigarette tin containing two bracelets and a gold ring which were said to have belonged to the deceased woman and which she was said to have